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**UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA**

**SAN FRANCISCO DIVISION**

ASUS COMPUTER INTERNATIONAL,

*Plaintiff,*

v.

ROUND ROCK RESEARCH, LLC,

*Defendant.*

ROUND ROCK RESEARCH, LLC,

*Counterclaim Plaintiff,*

v.

ASUSTEK COMPUTER INC. AND  
 ASUS COMPUTER INTERNATIONAL,

*Counterclaim Defendants.*

Civil Action No. 3:12-cv-02099-JST

**ROUND ROCK'S MOTION FOR LEAVE TO  
 SUPPLEMENT ITS INFRINGEMENT  
 CONTENTIONS**

Date: February 6, 2014

Time: 2:00 p.m.

Courtroom: 9, 19<sup>th</sup> Floor

Judge: Hon. Jon S. Tigar

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**NOTICE OF MOTION AND MOTION**

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that Defendant and Counterclaim Plaintiff Round Rock Research, LLC (“Round Rock”), moves the Court, pursuant to Fed. R. Civ. P. 15(a), Civ. L.R. 7, and Patent L.R. 3-6, for leave to supplement its infringement contentions based upon newly available information against “Accused Instrumentalities” already identified as infringing in Round Rock’s Infringement Contentions. The hearing on this motion is scheduled for February 6, 2014 at 2:00 p.m.

Round Rock’s motion is based upon this Notice and Motion, the accompanying Memorandum of Points and Authorities, the Declaration of Lauren M. Nowierski in support of this motion and supporting exhibits, the pleadings and other papers on file with the Court in this matter, and such further argument and evidence which may be presented at or before a hearing.

## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. INTRODUCTION**

Round Rock seeks leave of the Court pursuant to Patent Local Rule 3-6 to supplement its infringement contentions to include newly available information.<sup>1</sup> That information includes facts from approximately 20,000 pages of non-public schematics and technical information regarding ASUS's accused products first produced by ASUS between December 5 and December 11, 2013, pursuant to the Court's November 20, 2013 Order granting Round Rock's motion to compel (D.I. 145). In addition, Round Rock seeks to include information from newly available reverse engineering reports of ASUS's accused products that Round Rock was required to pursue because ASUS and its third party image sensor suppliers purportedly do not possess the granularity of information required by the asserted claims of the image sensor patents-in-suit. Indeed, on November 12, 2013, this Court granted non-party Pixart Imaging (USA) Inc.'s Motion to Quash Round Rock's subpoena seeking documents relating to one image sensor (No. PAS6311LT) Pixart Imaging Inc. sells to ASUS for incorporation into some accused ASUS products. (D.I. 134.) That ruling indicated that the Court would not allow Round Rock to seek discovery from other similarly-situated third parties (U.S. arms of foreign entities) who design and manufacture other image sensor components included in ASUS products accused of infringing the two image-sensor related patents-in-suit. (*Id.*) As a result, Round Rock immediately undertook expensive, time-sensitive reverse engineering to further confirm the structure and manufacture of the image sensor components provided by those third parties. Round Rock received those reverse engineering reports in two batches—one on December 10, 2013 and one on December 19, 2013. The schematics and reverse engineering reports Round Rock has obtained in the last two weeks of discovery relate to products that Round Rock accused of infringement in its Initial Patent Local Rule 3-1 Infringement Contentions. By supplementing its Infringement Contentions approximately within three days of receiving the final reverse engineering reports for the accused image sensors and a mere nine days

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<sup>1</sup> Round Rock served its Supplemental Infringement Contentions on ASUS on December 22, 2013, and inquired as to whether ASUS would oppose its motion for leave to supplement as early as December 20, 2013. (Nowierski Decl. Exs. A-L.) However, ASUS did not reply to Round Rock's requests.

1 after receiving ASUS's production of thousands of pages of technical documents, Round Rock has  
2 acted with diligence.

3 Moreover, allowing Round Rock to supplement its Infringement Contentions presents no  
4 unfair prejudice to ASUS. Round Rock's proposed supplements to its infringement contentions  
5 merely clarify its already disclosed infringement theories against products that have already been  
6 accused for over one year. Moreover, since ASUS delayed producing technical documents required  
7 by Patent Local Rule 3-4(b) by more than one year, ASUS can hardly claim unfair prejudice from  
8 Round Rock's supplemental infringement contentions—any prejudice is the result of ASUS's  
9 dilatory conduct. No further discovery will be necessary as a result of these supplemental  
10 contentions because Round Rock is not seeking to add any new claims, ASUS has already provided  
11 invalidity contentions for the asserted claims, and these supplemental contentions further refine  
12 Round Rock's infringement theories based on recently discovered non-public information (and in  
13 light of the Court's recent claim construction), which was already in ASUS's possession when it  
14 brought this action for a declaratory judgment. Furthermore, the newly available image sensor  
15 reverse engineering information confirms that the image sensors already accused in this case infringe  
16 the asserted patents in the same way as the representative products. Because good cause exists and  
17 no prejudice will result, Round Rock respectfully requests that the Court grant the Motion.

## 18 II. **RELEVANT FACTUAL BACKGROUND**

### 19 A. **Round Rock's Initial Infringement Contentions**

20 On September 20, 2012, Round Rock served its Patent L.R. 3-1 Disclosure of Asserted  
21 Claims and Infringement Contentions ("Infringement Contentions"), asserting U.S. Patent Nos.  
22 6,570,791 ("the '791 patent"), 6,765,276 ("the '276 patent"), 6,845,053 ("the '053 patent"),  
23 6,930,949 ("the '949 patent"), and 7,279,353 ("the '353 patent") (collectively the patents-in-suit").  
24 (D.I. 8 ¶¶ 12-18.) Those patents relate to three distinct technology areas: the '276 and '353 patents  
25 relate to CMOS image sensors (collectively, the "Image Sensor Patents"), the '791 and '053 patents  
26 relate to eMMC Flash Memory (collectively, the "eMMC Flash Memory Patents"), and the '949  
27 patent relates to Double Data Rate ("DDR") Memory (the "DDR Memory Patent"). In its initial  
28 Infringement Contentions, Round Rock provided claim charts of several ASUS products it had

reverse-engineered and also listed other accused products for which the charted products were representative of infringing the patents in the same way, according to the same theory. The Court confirmed in its October 8, 2013 Order that Round Rock's infringement contentions—using representative products—were indeed, proper. (D.I. 111, at 3-4.)

**B. ASUS's Deficient Document Productions**

Although Round Rock accused several products for each patent, ASUS produced only certain documents related to the products Round Rock reverse engineered for the purposes of its Patent L.R. 3-4(b) document production. (Nowierski Decl. ¶ 15.) In addition to not complying with Patent L.R. 3-4(b) obligations, ASUS also refused to produce many documents in response to Round Rock's requests for production for products that were accused of infringing Round Rock's patents (and listed in Round Rock's Infringement Contentions) but were not reverse engineered. ASUS took the position that certain accused products were not properly accused and therefore not subject to discovery. (E.g., Nowierski Decl. Ex. M (February 19, 2013 Letter from J. Pistorino to L. Nowierski).) Round Rock diligently pursued discovery, but ASUS refused to produce the schematics and other technical documents that Round Rock was entitled to. Ultimately, that issue was brought before the Court, and the Court ruled in Round Rock's favor. (D.I. 145; *see also* Part II.C, below.)

**C. This Court Ruled That All Products Listed In Round Rock's Infringement Contentions Are Properly Accused And Documents Related To Them Are Discoverable**

On October 8, 2013, this Court denied ASUS's motion for summary judgment of non-infringement. (D.I. 111.) In its Order, the Court expressly rejected ASUS's theory that the uncharted products listed in Round Rock's Infringement Contentions were not properly accused and therefore outside the scope of discovery. (*Id.* at 3-4.) Subsequently, the parties submitted a Joint Discovery Letter to the Court regarding ASUS's refusal to produce technical documents relating to the accused products that were not charted in Round Rock's Infringement Contentions. (D.I. 121.) On November 20, 2013, Magistrate Judge Cousins ordered ASUS to produce schematics for all products accused in Round Rock's Infringement Contentions. (D.I. 145.)



**D. Round Rock Diligently Supplemented Its Infringement Contentions After Receiving ASUS's December 10, 2013 Document Production Related to the eMMC Flash Memory Patents and DDR Memory Patents**

Between December 5 and December 11, 2013, ASUS produced approximately 20,000 pages of schematics relating to the accused products in response to Magistrate Judge Cousins' November 20, 2013 Order. (Nowierski Decl. Exs. N-P.) Round Rock diligently reviewed those documents and supplemented its infringement contentions ("Supplemental Infringement Contentions") regarding the '053, '791, and '949 patents by providing additional claim charts to cite to those schematics and clarify the infringement theories for certain products that were accused but not charted in the Infringement Contentions. (Nowierski Decl. Exs. A-K (Round Rock's First Supplemental Infringement Contentions)). Round Rock's First Supplemental Infringement Contentions do not add any additional products or asserted claims. (*Id.* at Ex. B.) The supplemental charts for the '053, '791, and '949 patents merely cite to the newly-produced schematics, and further refine Round Rock's already disclosed infringement theories based on that newly discovered evidence as well as the Court's Aug. 9, 2013 Claim Construction Order. (D.I. 82; *see also* Nowierski Decl. Exs. C, E, F.)

**E. This Court Ruled That Round Rock Could Not Seek Discovery Related To The Image Sensor Patents From Certain Third Parties**

Round Rock diligently sought discovery related to the products it accused of infringing the Image Sensor Patents. (*See, e.g.,* Nowierski Decl. Ex. Q.) However, ASUS represented that it did not have possession, custody, or control of the technical documents showing the requisite level of detail of certain components, including image sensors, provided by third parties. (Nowierski Decl. ¶ 19.) Accordingly, Round Rock subsequently attempted to obtain the relevant documents from the component suppliers identified by ASUS (*e.g.,* OmniVision, Pixart, BYD, SETi, and Himax). (Nowierski Decl. ¶ 20.) However, many of the image sensor suppliers (*e.g.,* Pixart and BYD) are headquartered outside of the United States, and Round Rock was forced to subpoena those maintain U.S.-based subsidiaries. Each of the U.S.-based subsidiaries claimed that they served the limited purposes of United States marketing and sales and did not possess the design and manufacturing documents sought by Round Rock's subpoena. Third-party Pixart USA moved to quash Round Rock's subpoena based upon the bare assertion that it did not possess the design and manufacturing

documents sought by Round Rock, and Magistrate Judge Cousins granted Pixart's motion on the grounds that the relevant documents are not in the possession, custody or control of Pixart U.S.A. (D.I. 134. (Nov. 12, 2013).) Because most of the component suppliers relevant to the Image Sensor Patents are, like Pixart, headquartered outside of the United States, and only maintain U.S. subsidiaries, it became clear that Round Rock would not be able to obtain the relevant documents through discovery. In addition, OmniVision claimed that it did not possess design and manufacturing documents because its image sensors are manufactured overseas by third parties. (Nowierski Decl. Ex. R.)

**F. Round Rock Diligently Reverse Engineered Additional Products Already Accused Of Infringing The Image Sensor Patents And Amended Its Infringement Contentions**

The same day that this Court granted Pixart's motion to quash and it became clear that Round Rock would not be able to obtain relevant documents through discovery, Round Rock began reverse engineering additional products that it had already accused of infringing the Image Sensor Patents in its Infringement Contentions. (Nowierski Decl. ¶ 21.) In the approximately five weeks since this Court denied Round Rock's attempts to obtain discovery from the third party component suppliers related to the Image Sensor Patents, Round Rock has reverse engineered an additional eight products at a cost of more than \$120,000. Those reverse engineering analyses form the basis of Round Rock's supplements to its Infringement Contentions related to the Image Sensor Patents.

As is clear from Round Rock's Supplemental Infringement Contentions, Round Rock is not supplementing its infringement contentions for the Image Sensor Patents to disclose any new products or any new theories. (Nowierski Decl. Exs. D, G, and H.) Indeed, Round Rock's First Supplemental Infringement Contentions merely identify additional non-public information from the recently discovered reverse engineering reports that further confirms Round Rock's already disclosed infringement theories for those two patents. (*Id.*)

**III. LEGAL STANDARD**

Patent Local Rule 3-6 allows a party to amend or supplement its infringement contentions "upon a timely showing of good cause." Such "good cause" may exist when there is a "[r]ecent discovery of nonpublic information about the Accused Instrumentality which was not discovered,

1 despite diligent efforts, before the service of the Infringement Contention.” Patent L.R. 3-6(c). In  
 2 determining whether good cause exists, the Court performs a two-step analysis: “first, the court must  
 3 determine whether the moving party was diligent in amending its contentions; second the court must  
 4 determine whether the non-moving party would suffer undue prejudice if the motion to amend were  
 5 granted.” *DCG Sys. v. Checkpoint Techs., LLC*, No. 11-cv-03792-PSG, 2012 U.S. Dist. LEXIS  
 6 53193, at \*11 (N.D. Cal., Apr. 16, 2012) (citing *Barco N.V. v. Tech. Properties Ltd.*, No. 5:08-cv-  
 7 053998, 2011 WL 3957390, at \*1 (N.D. Cal. Sept. 7, 2011)). “Judges in this district have  
 8 recognized that the Patent Local Rules are not a straightjacket into which litigants are locked from  
 9 the moment their contentions are served.” *Halo Elecs., Inc. v. Bel Fuse Inc.*, No. C07-06222 RMW  
 10 (HRL), 2010 U.S. Dist. LEXIS 97640, 2010 WL 3489593, at \* 1 (N.D. Cal. Sep. 3, 2010). The  
 11 Federal Circuit has explained that diligent and justified efforts to update infringement contentions  
 12 should be permitted:

13 [R]efusing to allow any amendment to contentions based on new  
 14 information developed in discovery could be contrary to the spirit of  
 15 the Federal Rules. ... But we see nothing in the Federal Rules that is  
 16 inconsistent with local rules requiring the early disclosure of  
 infringement ... contentions and requiring amendments to contentions  
 to be filed with diligence.

17 *O2 Micro Int’l Ltd. v. Monolithic Power Sys., Inc.*, 467 F.3d 1355, 1366 (Fed. Cir. 2006).

18 Courts in this District routinely grant motions for leave to amend infringement contentions  
 19 after the disclosure of nonpublic documents relating to the accused products. *E.g.*, *DCG Sys.*, 2012  
 20 U.S. Dist. LEXIS 53193, at \*12; *Seiko Epson Corp. v. Coretronic Corp.*, No. C 06-06946, 2008 WL  
 21 2563383 (N.D. Cal., Jun. 23, 2008). For example, in *DCG Sys. v. Checkpoint Techs., LLC*, the  
 22 Court granted the patentee’s motion to amend its infringement contentions to add new asserted  
 23 claims where the patentee learned additional details about the accused products from nonpublic  
 24 manuals produced pursuant to Patent L.R. 3-4. *DCG Sys.*, 2012 U.S. Dist. LEXIS 53193, at \*10-12.  
 25 In its analysis, the Court concluded that the patentee was diligent by moving to amend its  
 26 Infringement Contentions within five weeks of receiving the non-public documents and contrasted  
 27 other cases in which a lack of diligence was found because the patentee had waited five months or  
 28 more. *Id.* at \*10-12. In addition, courts in this District do not find prejudice when the party

1 amending or supplementing its contentions is not accusing any new products or new components of  
 2 accused products. *See, e.g., GPNE Corp. v. Apple, Inc.*, No. 5:12-cv-02885, 2013 U.S. Dist. LEXIS  
 3 166723, at \*12-13 (N.D. Cal. Nov. 22, 2013); *Apple Inc. v. Samsung Elecs. Co.*, No. 12-CV-0630-  
 4 LHK, 2013 U.S. Dist. LEXIS 91450, at \*45-46 (N.D. Cal. June 26, 2013).

#### 5 IV. **ARGUMENT**

##### 6 A. **Round Rock's Supplemental Infringement Contentions Relating to the eMMC and DDR Memory Patents Are For Good Cause.**

7 The Patent Local Rules that govern this case provide examples of good cause to amend or  
 8 supplement infringement contentions, including the “[r]ecent discovery of nonpublic information  
 9 about the Accused Instrumentality which was not discovered, despite diligent efforts, before the  
 10 service of the Infringement Contentions.” Patent L.R. 3-6(c). Round Rock’s proposed supplement  
 11 to its Infringement Contentions related to the eMMC Flash Memory and DDR Memory Patents falls  
 12 squarely within this example of good cause.

##### 13 1. **Round Rock Acted With Diligence In Supplementing Its Infringement Contentions Relating To The eMMC Flash Memory and DDR Memory 14 Patents.**

15 Round Rock is moving to supplement its Infringement Contentions less than two weeks after  
 16 ASUS produced over 20,000 pages of nonpublic schematics. (Nowierski Decl. ¶ N-P.) Until  
 17 ASUS’s recent document productions, made only after it was ordered to do so by this Court, ASUS  
 18 had produced virtually no schematics relating to the uncharted products accused of infringing the  
 19 eMMC Flash Memory and DDR Memory Patents. (Nowierski Decl. ¶ 14.) Round Rock’s  
 20 supplements to its infringement contentions are based on that information, which Round Rock could  
 21 not ascertain from publicly available documents. (*Id.*) Round Rock, thus, “acted with diligence in  
 22 promptly moving to amend when new evidence [was] revealed in discovery.” *O2 Micro*, 467 F.3d at  
 23 1363; *see also, DCG Sys.*, 2012 U.S. Dist. LEXIS 53193, at \*10-12 (holding that patentee was  
 24 diligent by amending infringement contentions five weeks after the defendant produced nonpublic  
 25 user manuals pursuant to Patent L.R. 3-4).

26 In addition to its diligence in moving to supplement its Infringement Contentions, Round  
 27 Rock also has been diligent throughout the discovery process in this case. Round Rock first raised  
 28 the issue of ASUS’s deficient document production in a January 24, 2013 letter. (Nowierski Decl.

1 Ex. S.) Round Rock met and conferred and corresponded with ASUS over the subsequent months,  
2 but ASUS never complied with its obligations to produce technical documents pursuant to Patent  
3 L.R. 3-4(a) and in response to Round Rock's document requests. ASUS maintained its position that  
4 Round Rock's Pat. L. R. 3-1 Infringement Contentions were insufficient under the Local Rules, and  
5 therefore, did not properly accuse the products Round Rock did not reverse engineer for the purposes  
6 of its Infringement Contentions. (*E.g.*, Nowierski Decl. Ex. M.) ASUS, for months, withheld  
7 discovery on that basis. Ultimately, ASUS moved for Summary Judgment of Non-Infringement, in  
8 part, on the basis that Round Rock did not properly accuse certain products, and therefore did not  
9 have evidence of infringement for those products. (D.I. 85.) On October 8, 2013, the Court  
10 ultimately rejected ASUS's theory by denying its Motion for Summary Judgment as premature, and  
11 finding that Round Rock's Infringement Contentions were proper under the Local Patent Rules.  
12 (D.I. 111, at 3-4.) Once it became clear that ASUS was not going to willingly produce technical  
13 documents in this case, even after that Court's order, Round Rock promptly sought relief from the  
14 Court on October 29, 2013, which the Court ultimately granted on November 20, 2013.<sup>2</sup> (D.I. 145.)  
15 That order required the parties to reach agreement on a Protective Order within a week, and that  
16 ASUS produce the schematics within fourteen days of that Protective Order (by December 11,  
17 2013). (*Id.*) ASUS made that production on a rolling basis between December 5, 2013 and  
18 December 11, 2013. Round Rock served its supplemental contentions on ASUS on December 22,  
19 2013, just eleven days after that 20,000 page production. In addition, Round Rock has taken over  
20 six depositions of ASUS, including three in Taipei, Taiwan in October 2013, in order to attempt to  
21 obtain the evidence it needs. (Nowierski Decl. ¶ 22.) Accordingly, Round Rock respectfully  
22 submits that diligence weighs heavily in favor of its request for leave to supplement its infringement  
23 contentions.

24  
25  
26 <sup>2</sup> Notably, Round Rock initially sent its half of the letter brief to move to compel ASUS to produce, inter alia, the  
27 schematics, just two days after that Order Denying ASUS's Motion for Summary Judgment, on October 10, 2013,  
28 pursuant to the Court's Standing Order. (Nowierski Decl. Ex. T (Oct. 10, 2013 Email from L. Nowierski to J. Pistorino).)

2. **ASUS Will Not Be Prejudiced By An Order Allowing Round Rock To Supplement Its Infringement Contentions Relating To the eMMC Flash Memory and DDR Memory Patents.**

ASUS is in no position to claim that it will suffer prejudice from Round Rock's First Supplemental Infringement Contentions—any purported prejudice would be a direct result of ASUS's dilatory discovery misconduct. Although Round Rock is moving to supplement its Infringement Contentions the first court day after the close of fact discovery, the reason for that timing is that ASUS waited more than twelve months from the date its Patent L.R. 3-4(a) document production was due (November 8, 2012) before producing the schematics related to the products accused of infringing the eMMC Flash Memory and DDR Memory Patents. As in *DCG Sys.*, Round Rock is moving to amend its infringement contentions mere weeks after receiving these critical technical documents—that plainly should have been included in its original Patent L.R. 3-4(b) production—on December 10 and 11 pursuant to the Court's order that compelled ASUS to produce them. *Id.* at \*10-12.

There is no prejudice to ASUS because Round Rock's First Supplemental Infringement Contentions are not a significant departure from its Initial Infringement Contentions. *See Advanced Micro Devices v. Samsung Elecs. Co.*, No. 08-00986, 2010 WL 1293374, at \*3 (N.D. Cal., Mar. 31, 2010) (The "Local Rules' limitations on a plaintiff's ability to amend infringement contentions stem from concerns of notice and prejudice"). In its First Supplemental Infringement Contentions, Round Rock does not accuse any new products or seek to add any newly asserted claims; instead it merely supplements the claim charts of the '053, '791, and '949 patents to include additional non-public information for products that were already properly accused. Here, as in *Advanced Micro Devices*, ASUS had notice of the accused products and its components long before the close of fact discovery, and therefore will suffer no undue prejudice. *Advanced Micro Devices*, 2010 WL 1293374, at \*3

**B. Round Rock's Supplement Of Its Infringement Contentions Relating To The Image Sensor Patents Is For Good Cause.**

Good cause exists to grant Round Rock leave to supplement its infringement contentions related to the Image Sensor patents as well. As discussed above, Round Rock has shown diligence in conducting reverse engineering analyses and pursuing discovery of ASUS's infringing products.

1 And because Round Rock's supplements to its infringement contentions do not accuse additional  
2 products, there is no undue prejudice to ASUS.

3 **1. Round Rock Acted With Diligence In Supplementing Its Infringement**  
4 **Contentions Related To The Image Sensor Patents.**

5 On November 12, 2013, this Court granted Pixart's motion to quash Round Rock's subpoena  
6 based upon Pixart's bare assertion that it did not possess the documents because it was merely a  
7 marketing and sales arm of its overseas parent corporation, making it clear that Round Rock would  
8 not be able to obtain relevant documents—necessary to prove infringement of the Image Sensor  
9 Patents—from the other third-party image sensor providers who had made the same claims. (D.I.  
10 134.) As a result, Round Rock immediately began the process of to reverse engineering eight  
11 additional products that it had accused of infringing the Image Sensor Patents in its Infringement  
12 Contentions. (Nowierski Decl. ¶ 21.) Now, approximately five weeks after beginning the reverse  
13 engineering effort and less than five days after receiving the results, Round Rock has completed the  
14 additional reverse engineering and supplemented its Infringement Contentions with information  
15 from that effort. By taking immediate action in response to this Court's ruling, Round Rock has  
16 demonstrated diligence in amending its Infringement Contentions. *See DCG Sys.*, 2012 U.S. Dist.  
17 LEXIS 53193, at \*10-12 (holding that patentee was diligent by amending infringement contentions  
18 five weeks after the defendant produced nonpublic user manuals pursuant to Patent L.R. 3-4).

19 **2. ASUS Will Not Be Prejudiced By An Order Allowing Round Rock To**  
20 **Amend Its Infringement Contentions Relating To the Image Sensor**  
21 **Patents.**

22 As with the supplements related to the eMMC Flash and DDR Memory Patents, there is no  
23 undue prejudice because Round Rock's supplement to its infringement contentions related to the  
24 Image Sensor Patents does not accuse any new products or seek to include newly asserted claims.  
25 *See, e.g., GPNE Corp.*, 2013 U.S. Dist. LEXIS 166723, at \*12-13 ("Because 'GPNE is not directing  
26 its proposed amended contentions to new products or new components of the accused products, the  
27 proposed amended contentions will not prejudice Defendants in any way.'"); *Advanced Micro*  
28 *Devices v. Samsung Elecs. Co.*, No. 08-00986, 2010 WL 1293374, at \*3 (N.D. Cal., Mar. 31, 2010)  
(The "Local Rules' limitations on a plaintiff's ability to amend infringement contentions stem from



1 concerns of notice and prejudice”); *see also Apple Inc.*, 2013 U.S. Dist. LEXIS 91450, at \*45-46.  
2 Round Rock merely adds claim charts for products that were already properly accused with newly  
3 available non-public information from reverse engineering that confirms infringement under Round  
4 Rock’s previously representative infringement theories allowed by the Court. (D.I. 112, at 3-4  
5 (“ASUS argues that the infringement contentions are improper because Round Rock chose to use  
6 representative products rather than charting each accused product separately. The Court disagrees.”).  
7 Here, as in *GPNE Corp.* and *Advanced Micro Devices*, ASUS had notice of the accused products—  
8 which are its own products—long before the close of fact discovery, and therefore will suffer no  
9 prejudice.

10 V. **CONCLUSION**

11 For the foregoing reasons, Round Rock respectfully requests that this Court grant its Motion  
12 for Leave to Supplement its Infringement Contentions.



1 DATED: December 23, 2013

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 23rd day of December, 2013, the foregoing document was caused to be served via the Court's CM/ECF System per Local Rule 5-5(b) on the following:

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